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ABSTRACT

The review of the paralegal movement by the National Paralegal Institute covers: (1) definition of a paralegal or legal assistant, (2) organizations active in the paralegal field, and (3) issues affecting the paralegal movement. Classifications of paralegals are related to where paralegals work, where paralegals are trained, and what paralegals do. Paralegals may be employed by private sector or public sector (Community Services Administration Legal Services and government). Training may be on-the-job training; community college, college and law school, or proprietary school training; or short-term intensive training. Paralegals may be classified as generalists or specialists. Organizations active in the field include: paralegal professional associations, the American Bar Association, the National Paralegal Institute, the Association of American Law Schools, and the National Consumer Center for Legal Services. Accreditation for paralegal training programs and certification or licensing are current issues in the paralegal movement. (EA)

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A SHORT REVIEW OF THE PARALEGAL MOVEMENT

DEFINITION OF A PARALEGAL*

There is no precise definition of the term "paralegal." Because the occupation is relatively new and its potential remains unrealized, paralegal job functions are still being identified and described. However, those in the field, including paralegals themselves, tend to use the term in a certain way. It is generally accepted that a paralegal must be specifically trained, either on the job or in a formal training program. Paralegals perform work previously regarded as within only an attorney's capabilities. Paralegals almost always work under the supervision of an attorney; some work without an attorney's direct supervision where authorized by statute or regulation or with special court permission. For example, paralegals may represent clients in some administrative agency proceedings, such as Social Security or welfare hearings. In addition, paralegals are allowed to appear in some small claims courts.

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*The use of paralegal in this report is not meant to indicate a preference over the terms "legal assistant," "attorney's assistant," "legal paraprofessional," "advocate," or others.

The paralegal concept excludes some fairly well-defined legal support roles: secretary, clerk, librarian, social worker, community aide, and office administrator. Paralegals should be trained in basic legal knowledge, skills, and one or more specialties. What is done with this training varies as the following picture of paralegal diversity reveals. The profile of paralegals was obtained by classifying them as to where they work, what they do, where they are trained, etc. These classifications are purely for convenience--they have no formal significance.

Where Paralegals Work

Paralegals may be found almost anywhere legal work is performed. For convenience, this report divides paralegals into two broad categories according to their place of employment: private sector and public sector paralegals. Private sector paralegals work in private, profitmaking law firms; public sector paralegals in nonprofit legal services delivery systems or government agencies. The two categories are not exclusive; paralegals may move from one sector to the other just as lawyers may apply their skills to many areas of law.

1. Private Sector Large, urban law firms are the biggest private sector employers. However, as lawyers are becoming more familiar with the benefits of employing paralegals,

smaller firms are finding paralegals a practical solution to meeting both their needs and those of their clients. Businesses, especially large corporations, also are hiring paralegals to work in their in-house counsel divisions.

2. Public Sector

A. Community Services Administration Legal Services.* Approximately 50 percent of Community Services Administration (CSA, formerly OEO) Legal Services projects employ paralegals. A few projects employ as many as 30 paralegals although most employ only 1 or 2. More than 85 percent of the paralegals have had some college training; over 45 percent are college graduates. Few have received any formal paralegal training before entering a Legal Services program.

A single paralegal may perform a wide range of services. Virtually all interview clients. A large percentage negotiate with government agencies on behalf of clients in public entitlement cases, represent clients at administrative hearings, and do investigative work. Many also do legal research and drafting.

CSA Legal Services project directors report substantial satisfaction with the work of paralegals; however, lack of funds prevents them from hiring more.

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*On October 13, 1975, all CSA Legal Services activities will be turned over to the Legal Services Corporation.

B. Government. Federal, state, and local governments employ many paralegals and are exploring new ways in which to use them. The Civil Service Commission (CSC) estimates that the Federal Government employs 30,000 paralegals and envisions an even larger role for them in the near future. CSC has developed a new Paralegal Assistant Series that includes the following functions: (a) analyzing legal material and preparing digests of points of law for internal agency use; (b) maintaining legal reference files and furnishing attorneys and others with citations to pertinent decisions; (c) selecting, assembling, summarizing, and compiling substantive information on statutes, treaties, and specific legal subjects; (d) collecting, analyzing, and evaluating evidence as to activities under specific Federal laws before an agency hearing or decision; (e) analyzing facts and legal questions presented by personnel administering specific Federal laws; answering questions by collecting interpretations of applicable legal provisions, regulations, precedent, and agency policy; and, occasionally, preparing informational and instructional material for general use; and (f) performing other paralegal duties "requiring discretion and independent judgment" in applying specialized knowledge of particular laws, regulations, precedent, or agency practices based thereon.

Paralegals are employed by the National Labor Relations Board; Federal Trade Commission; Equal Employment Opportunity Commission; Department of Justice; and Department of Health, Education, and Welfare.

3. Other Paralegal Jobs Group and prepaid legal services plans promise to provide paralegal jobs as those delivery systems gain popularity.

A number of law communes throughout the country also employ paralegals, generally trained by commune lawyers. It is a commune tenet that lawyers, paralegals, and other staff are equal in responsibility, salary, and capacity.

Some criminal justice agencies, for example, public defender programs, prosecutors' offices, and bail projects, use trained laymen to assist lawyers, and there has been talk of greatly expanding the paralegal role in criminal law.

Where Paralegals Are Trained

1. On the Job In addition to Legal Services projects, many law firms and government agencies also employ paralegals trained on the job. The Chicago Association of Paralegal Assistants found that 60 percent of their members who responded to a recent survey had no formal paralegal training. This situation will probably change as paralegal training programs become more available and gear their curricula to the needs of the job market.

Many lawyers and paralegals stress the necessity and desirability of on-the-job instruction even for paralegals who have completed formal training programs, and most law firms and Legal Services projects provide on-the-job training by individual lawyers. Training, of course, varies considerably. In addition, some Legal Services projects, law firms, and government agencies have inauguarated regular in-house training programs.

2. Community Colleges About 70 community colleges offer paralegal training. The curricula are almost entirely geared to private law jobs. The colleges generally take no responsibility for placement of students, and the programs are so new that employment success has not been measured. Common elements of most community college curricula are law office administration, legal writing, and legal research. Beyond that, most offer a potpourri of courses designed to produce a generalist: corporations, tax, real estate, family law. With few exceptions, community colleges do not provide courses relevant to either Legal Services or other public sector employment.

3. Colleges and Law Schools Although most paralegal training programs are offered at the community college level, some colleges and law schools also offer them. Most college programs prepare students for work in the private sector.

Only a few law schools offer paralegal training. The University of West Los Angeles Law School conducts a continuing education paralegal program which, for the academic year 1971-72, enrolled 195 students (184 women; 138 former or present legal secretaries; 56 high school graduates). The Utah College of Law Institute designs systems for training paralegals in routinized areas of private law practices. At Antioch School of Law about 15 paralegals a year are trained to enter either the public or private sector. The University of Southern California Law Center regularly holds intensive training programs, primarily on specialization subjects for legal secretaries.

4. Proprietary Schools The number of proprietary schools offering paralegal courses is still small. This may change as job markets for paralegals develop. As there is no clearinghouse for information on proprietary schools, it is difficult to estimate their number. The Institute for Paralegal Training in Philadelphia, a subsidiary of Bell & Howell, Inc., probably offers the best known training program in this category. Established 4 years ago, it carefully selects and screens college graduates, mainly women, and provides 3 to 4 months of intensive training in one specialty. Job placement is guaranteed.

Other proprietary schools tend to be general career/vocational institutions offering short courses.

5. Short-Term Intensive Training Programs Short-term intensive programs are useful for paralegals who cannot spend much time away from their jobs and who need only to acquire specific skills and information. The cost in time and money is tolerable for those who cannot afford college tuitions. Such programs permit training as the need arises for specific skills development.

The National Paralegal Institute (NPI) provides such training. A few Legal Services projects have also developed short, intensive training programs for their own staffs. In addition, some colleges and law schools occasionally offer short sessions in such areas as civil rights, probate, divorce, and legal research. For example, in 1969 Columbia Law School trained 20 paralegals, slated for OEO Legal Services jobs, in a 6-week intensive program.

What Paralegals Do

Paralegals may be divided into two broad categories according to the work they perform: generalist and specialist.

1. Generalist Paralegals in this category are expected to handle a wide range of responsibilities, such as interviewing, fact gathering, research, and document drafting. Generalists are usually found in small law offices.

2. Specialist Most paralegals are specialists. Their training usually focuses on one area of the law, such as wills, real estate, trusts, criminal law, public assistance, or landlord-tenant.

Specialization allows efficient program operation and training. Many paralegals with adequate training and supervision become experts in one area and handle most of the work involved in processing cases in that area.

Federal and state regulations permit laymen to represent clients at many different kinds of administrative hearings. A group of paralegals has emerged that represent clients at such hearings. These paralegals--administrative specialists--are found in Legal Services and also in non-profit organizations such as welfare rights organizations, tenant's groups, and senior citizen agencies.

ORGANIZATIONS ACTIVE IN THE PARALEGAL FIELD

In addition to Legal Services projects and law firms involved in the paralegal field, several national organizations have taken an interest in how the occupation develops.

Paralegal Professional Associations As the paralegal movement gained momentum and recognition, paralegals began forming associations. Some were started by students in paralegal training programs, others by working paralegals. The first groups were primarily composed of private sector paralegals. However, it soon became apparent that the interests, goals, and needs of all paralegals were similar, and the organizations attempted to reflect the diversity found within the occupation.

In May 1974 representatives of eight associations met and founded the National Federation of Paralegal Associations. During its first year, the Federation served as a communications network to alert and inform members of issues and events that affected paralegals.

At their 1975 meeting, representatives resolved that the Federation would assume a new structure and become a professional association for paralegals. It was further resolved that Federation members would take an active role in developing and regulating the occupation. There are about 20 new organizations in the process of forming and joining the Federation.

The legal assistant section of the National Association of Legal Secretaries has formed a separate organization, the National Association of Legal Assistants (NALA). Unlike the Federation, which consists of organizations, membership in NALA is on an individual basis.

American Bar Association In 1968 the American Bar Association's (ABA's) Special Committee on the Availability of Legal Services reported to the House of Delegates that "legal services would be more fully available to the public" if the legal profession were to recognize that "freeing a lawyer from tedious and routine detail" would conserve the lawyer's time

and energy for "truly legal problems." Accordingly, three recommendations were made:

1. The legal profession should recognize that there are many tasks in serving a client's needs which can be performed by a trained non-lawyer assistant working under the direction and supervision of a lawyer;

2. The legal profession should encourage the training and employment of such assistants; and

3. A special committee of the ABA should be created to consider the subject of lay assistants for lawyers.

These recommendations were adopted by the House of Delegates and the Special Committee on Lay Assistants (now the Standing Committee on Legal Assistants) was established. In 1969 the Special Committee sponsored limited surveys of law firms around the country and found that there was "a significant" use of nonlawyers.

In 1971 the Special Committee published a set of recommendations for paralegal training. It suggested that 1-, 2-, and 4-year college programs, be made available for legal secretaries, legal assistants, and legal administrators, respectively. The proposed curricula were slanted entirely towards private practice of law.

In 1973 the House of Delegates adopted "Guidelines" list of recommended standards for operating 2-year paralegal programs in colleges.

In 1974 the Special Committee received permission from the House of Delegates to begin approving (i.e., accrediting) paralegal training programs that met the "Guideline" standards.

There has been much opposition from lawyers, paralegal educators, and paralegals to ABA control of accreditation of paralegal training programs. One objection is that the paralegal occupation is new and accreditation standards, based on limited knowledge of the field, are premature. In addition, the ABA's guidelines are aimed at meeting the needs of only one narrow sector of the law. Institutions that structure their paralegal programs in order to gain ABA approval risk not being able to meet demands for paralegal training in other areas. For example, as government agencies continue to find new ways to use paralegals, flexibility in training curricula will be crucial in order to meet their needs.

Objections to the "guidelines" are directed not only to the substance, but also to the length of the proposed programs. A 2-year course is inappropriate for college graduates, working paralegals, and senior citizens, among others.

Finally, there is the issue of ABA control of the paralegal profession. Paralegals, and many educators and lawyers, seek a broadly representative group to accredit paralegal training, arguing that there is a vital public interest in the way the occupation evolves.

The National Paralegal Institute NPI was formed in June 1972 under an OEO grant, to support and promote the use of paralegals in the public sector of the law, particularly in Legal Services. NPI's broad mandate includes acting as liason with colleges, law schools, bar associations, and paralegal associations; developing strategies for the growth and development of the paralegal movement; designing training materials and conducting training for CSA paralegals; and doing research on training, utilization, and other important issues.

NPI conducts, and helps other Legal Services trainers conduct 1-week intensive training sessions for CSA paralegals around the country.

The Association of American Law Schools In 1970 the Association of American Law Schools (AALS) created a Committee on Paraprofessional Legal Education. That Committee recommended that AALS

-- commission two studies: a law review symposium on paralegals (24 Vanderbilt Law Review 1083, 1971) and a study and evaluation of present training programs;

-- consider commissioning a paralegal curriculum development project;

-- instruct the Committee on Pre-Legal Education and Admission to Law Schools to consider special admission standards for paralegals to law schools;

-- instruct the Committee on Teaching Outside Law Schools to consider the emerging need for paralegal teachers; and

-- offer to work with the ABA, CSA, and others on certification, supervision, and similar issues affecting the paralegal movement.

In November 1974 the Committee released its report presenting a broad overview of the paralegal movement and the issues and organizations affecting its development. Included were recommendations to the AALS Executive Committee about the role law schools should play in developing the paralegal occupation.* The report recommended that, among other things, AALS work to promote a broadly representative body of lawyers, paralegals, educators, and citizens to establish rules of accreditation of training and certification of paralegals.

National Consumer Center for Legal Services In 1972 representatives of the Nation's major unions held a conference on prepaid and group legal services plans. Those attending favored the creation of such programs and emphasized the use of "closed" panels of lawyers in which preselected groups of lawyers handle all legal problems generated by group members. In contrast, in the "open" panel approach, favored by most bar associations, all lawyers in the community are eligible to render services.

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*Copies of the report may be obtained from the Association of American Law Schools, One Dupont Circle, Washington, D.C., 20036.

The conferees formed the National Consumer Center for Legal Services, interested in efficiency techniques to reduce the cost of legal services to its members. Substantial paralegal components will be built into its plans. The group has established a national technical assistance program to help unions establish prepaid legal programs. A 1973 amendment of the Taft-Hartley Act makes prepaid legal services, as a fringe benefit, an item of collective bargaining. This development could dramatically increase the need for lawyers and paralegals.

ISSUES AFFECTING THE PARALEGAL MOVEMENT

Accreditation

Accreditation is the process by which an agency or organization evaluates and recognizes a program of study or an institution as meeting certain predetermined qualifications or standards. Whether paralegal training programs should now be subject to accreditation; how such an accrediting agency should be established; and who should control it are all pending issues.

A possible approach would be to create a broadly representative accrediting body, including not only paralegals but also lawyers, legal and paralegal educators, and public representatives.

Certification or Licensing

Certification is the voluntary process by which a non-governmental agency or association recognizes an individual who has met certain predetermined qualifications specified by that agency or association.

Licensing is the process by which an agency of government grants permission to persons meeting predetermined qualifications to engage in a given occupation and/or use a particular title. Only licensed individuals may engage in the given activity.

Licensing of paralegals has never been seriously discussed; however, certification has been proposed by several state bar associations. Most authorities believe that a valid certification program is not feasible, at least until current paralegal job functions have been more fully explored. Even so, some bar associations are pressing for certification of paralegals in order to control the development of the paralegal occupation.

Certification at this time, especially if controlled by the organized bar, would have a chilling effect on the development of the field. Some paralegals, motivated by a desire for status, higher salaries, and greater recognition, support certification. However, the overwhelming trend among paralegals, paralegal educators, and others seems to

favor deferring certification until the occupation has been better defined. Because the occupation is very new and for other reasons outlined above, certification for paralegals has begun in only one state.*

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*The certification movement in Oregon was initiated by the State Bar Association and has been wholly organized and controlled by the bar. The first certification examination is scheduled for Fall 1975.